



Senate

General Assembly

File No. 429

February Session, 2000

Substitute Senate Bill No. 478

Senate, April 5, 2000

The Committee on Judiciary reported through SEN. WILLIAMS of the 29th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

An Act Concerning Privileged Communications Between A Patient And A Licensed Professional Counselor.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 (NEW) (a) As used in this section:
- 2 (1) "Person" means an individual who consults a professional
- 3 counselor for purposes of diagnosis or treatment;
- 4 (2) "Professional counselor" means an individual licensed as a
- 5 professional counselor pursuant to chapter 383c of the general statutes;
- 6 (3) "Communications" means all oral and written communications
- 7 and records thereof relating to the diagnosis and treatment of a person
- 8 between such person and a professional counselor or between a
- 9 member of such person's family and a professional counselor;
- 10 (4) "Consent" means consent given in writing by the person or such
- 11 person's authorized representative;

12 (5) "Authorized representative" means (A) an individual
13 empowered by a person to assert the confidentiality of
14 communications which are privileged under this section, or (B) if a
15 person is deceased, the personal representative or next of kin of such
16 person, or (C) if a person is incompetent to assert or waive such
17 person's privileges hereunder, (i) a guardian or conservator who has
18 been or is appointed to act for the person, or (ii) for the purpose of
19 maintaining confidentiality until a guardian or conservator is
20 appointed, the person's nearest relative.

21 (b) Except as provided in subsection (c) of this section, in civil and
22 criminal actions, in juvenile, probate, commitment and arbitration
23 proceedings, in proceedings preliminary to such actions or
24 proceedings, and in legislative and administrative proceedings, all
25 communications shall be privileged and a professional counselor shall
26 not disclose any such communications unless the person or the
27 authorized representative of such person consents to waive the
28 privilege and allow such disclosure. The person or the authorized
29 representative of such person may withdraw any consent given under
30 the provisions of this section at any time in writing addressed to the
31 individual with whom or the office in which the original consent was
32 filed. The withdrawal of consent shall not affect communications
33 disclosed prior to notice of the withdrawal.

34 (c) Consent of the person shall not be required for the disclosure of
35 such person's communications:

36 (1) If a judge finds that a person, after having been informed that the
37 communications would not be privileged, has made the
38 communications to a professional counselor in the course of a mental
39 health assessment ordered by the court, provided the communications
40 shall be admissible only on issues involving the person's mental health
41 condition;

42 (2) If, in a civil proceeding, a person introduces such person's

43 mental health condition as an element of the claim or defense of such
44 person or, after a person's death, the condition of such person is
45 introduced by a party claiming or defending through or as a
46 beneficiary of the person, and the judge finds that it is more important
47 to the interests of justice that the communications be disclosed than
48 that the relationship between the person and professional counselor be
49 protected;

50 (3) Where mandated by any other provision of the general statutes;

51 (4) Where the professional counselor believes in good faith that the
52 failure to disclose such communication presents a clear and present
53 danger to the health or safety of any individual;

54 (5) If the psychologist believes in good faith that there is risk of
55 imminent personal injury to the person or to other individuals or risk
56 of imminent injury to the property of other individuals;

57 (6) If child abuse, abuse of an elderly individual or abuse of an
58 individual who is disabled or incompetent is known or in good faith
59 suspected; or

60 (7) Where a professional counselor makes a claim for collection of
61 fees for services rendered, the name and address of the person and the
62 amount of the fees may be disclosed to individuals or agencies
63 involved in such collection, provided notification that such disclosure
64 will be made is sent, in writing, to the person not less than thirty days
65 prior to such disclosure. In cases where a dispute arises over the fees or
66 claims or where additional information is needed to substantiate the
67 claim, the disclosure of further information shall be limited to the
68 following: (A) That the person was in fact receiving professional
69 counseling, (B) the dates of such services, and (C) a general description
70 of the types of services.

JUD Committee Vote: Yea 40 Nay 0 JFS

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Department of Public Health

Municipal Impact: None

Explanation**State Impact:**

It is anticipated that any resulting increase in complaints filed against professional counselors can be accommodated within the Department of Public Health's normal course of work.

OLR Bill Analysis

sSB 478

**AN ACT CONCERNING PRIVILEGED COMMUNICATIONS
BETWEEN A PATIENT AND A LICENSED PROFESSIONAL
COUNSELOR.****SUMMARY:**

With several specified exceptions, this bill makes confidential and not subject to disclosure, communications between a patient and his licensed professional counselor or between the patient's family and the counselor. The patient or his authorized representative may, however, give written consent to disclosure and thus permit the counselor to disclose the information. This consent may be withdrawn at any time but withdrawal has no effect on information already disclosed.

The bill defines "authorized representative" as (1) a person the patient authorizes to assert the confidentiality of the information, (2) a deceased patient's personal representative or next of kin, (3) an incompetent patient's court-appointed guardian or conservator, or (4) the person's nearest relative who may act until a guardian or conservator is appointed.

EFFECTIVE DATE: October 1, 2000

EXCEPTIONS TO THE CONSENT REQUIREMENT

Professional counselors do not have to get consent to disclose a patient's diagnosis and treatment:

1. in a civil, criminal, juvenile, probate, commitment, or arbitration proceeding or a preliminary proceeding to such actions;
2. in legislative or administrative proceedings;
3. in court-ordered mental health assessment cases if the patient knew

that his communications would not be confidential and if the disclosure is limited to the patient's mental health;

4. in civil proceedings where the patient or, in the event of his death, someone representing him or his beneficiary introduces the patient's mental health into evidence and the judge finds that the interest in disclosure outweigh the privilege;
5. when statutorily mandated to do so;
6. if they believe in good faith that failure to disclose would present a clear and present danger to someone's health or safety;
7. if they believe in good faith that a patient poses a risk of imminent personal injury to himself or to the person or property of others;
8. if they know, or in good faith suspect, that a child, elderly adult, or disabled or incompetent person is being abused; or
9. when making a claim to collect fees for services rendered.

When trying to collect fees, counselors may disclose to a collection agency the patient's name and address and the amount he owes. The counselor must give the patient written notice at least 30 days before the disclosure. If a dispute arises or additional information is needed to substantiate the claim, the counselor may disclose (1) that the patient was receiving professional counseling, (2) the dates of service, and (3) a general description of the types of service.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 40 Nay 0